No. 83-66

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

COLOMA COMMUNITY SCHOOL DISTRICT,
Petitioner,

v.

BARBARA JEAN BERRY, *et al.*,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF FOR PETITIONER

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INTRODUCTION

Coloma Community School District petitioned for a writ of certiorari on July 15, 1983. A cross-petition was filed on August 16 by Zelma Fellner, *et al.* (No. 83-254). On September 6 respondents Barbara Jean Berry, *et al.* filed a consolidated opposition to both petitions. That opposition was adopted on September 15 by the Benton Harbor Respondents.[1]

This brief replies only to respondents' arguments in opposition to Coloma's petition for certiorari, which are

[1] The consolidated opposition of the Berry respondents is cited as "Opp. ____." Coloma's petition is cited as "Pet. ____." The cross-petition is cited as "Cross-Pet. ____."

scattered throughout respondents' pleading. The cross-petitioners have presented issues that are wholly independent of the questions raised by Coloma; those issues have no bearing on Coloma's position and are not addressed in this brief.

The central points of Coloma's petition can be restated simply:

a) This Court has limited the judicial power to impose interdistrict remedies in desegregation cases to situations in which an outside school district has been a substantial cause of interdistrict segregation.

b) The lower courts found that Coloma was not a substantial cause of the segregation in Benton Harbor.

c) Therefore, the imposition of an interdistrict remedy on Coloma undercuts the settled law in this area.

The Court need not consider any other matters to reverse the decision of the Sixth Circuit as matter of law.

(1) Respondents have specifically accepted Coloma's statement of facts and its description of the lower court proceedings (Opp. 2, 15). Those sections of the petition (Pet. 2-11) emphasized the following rulings from the Sixth Circuit opinion:

> [D]esegregation case law in the Supreme Court limits [the interdistrict] remedy to situations where the race discrimination and intentional segregative practices are such as to have been a substantial cause of the condition which requires an interdistrict solution. [Pet. 10.]
>
> * * *
>
> [T]he Eaman transfer [to Coloma] simply could not have occasioned the massive long pre-existing prob-

> lems of racial discrimination and racial isolation within the School District of Benton Harbor. [Pet. 7.]

Respondents have thus acknowledged that, in the judgment of the lower courts, Coloma's inaction did not cause a "significant segregative effect" within Benton Harbor. Yet, it is precisely that kind of effect which would be necessary to justify the remedy imposed by those courts. *See Milliken* v. *Bradley*, 418 U.S. 717 (1974); *Dayton* v. *Brinkman*, 433 U.S. 406 (1977).

Nothing that respondents argue can alter the critical fact that Coloma did not cause Benton Harbor's segregation problem. Respondents allege, without citation, several claimed effects of Coloma's benign acceptance of the Eaman transfer, including the loss by Benton Harbor of the Eaman school building, a "property of significant financial value," and the failure of an unidentified bond issue (Opp. 34). But those effects are political and financial, not segregative. There is no conceivable basis on which they could have been a substantial cause of Benton Harbor's segregation.

The only segregative effect cited by respondents, the 0.6% increase in the proportion of black students in the Benton Harbor schools (Opp. 34), was acknowledged by the district court to be negligible (Pet. 16, n.8). In addition, the record is singularly void of segregative motivation. On the contrary, respondents claim that Coloma accepted the Eaman transfer for political reasons: "promised electoral support for [a Coloma] bond issue" (Opp. 26).

At the end of their opposition, respondents resort to unsubstantiated rhetoric in an attempt to articulate a basis for the interdistrict remedy imposed upon Coloma. They state, again without benefit of citation, that "the courts [below] found that the racially segregative and

educationally adverse impact [Coloma's] actions had on the Benton Harbor District was systemwide," and that "the conduct had thorough-going impact on each of the adjacent districts" (Opp. 41). The quoted language simply *cannot* be squared with what the lower courts really held (see *supra*, pp. 2-3). Indeed, respondents' reliance on that language demonstrates their recognition that without a finding of significant segregative effects there is no valid predicate for an interdistrict remedy.

(2) Respondents acknowledge that Judge Hillman's remedy is an interdistrict desegregation plan, but attempt to downplay its impact. Thus, they argue that student integration is wholly voluntary under the plan and that school reassignments may occur only within the Benton Harbor District itself (Opp. 38). Those arguments have no basis in fact. The interdistrict plan forges strong, permanent links between the three districts. For example, Coloma is committed to send 10% to 25% of its students to magnet schools in Benton Harbor and Eau Claire (Pet. 8). It also is committed to surrender its autonomy through continuing participation in interdistrict committees and governing councils (*id.* at 8, 9; *see also*, *id.* at 22A-96A).

Even more significant is the Sixth Circuit's warning that unless Coloma unfailingly complies with the desegregation plan, it could be forced into a formal three-district consolidation (Pet. 18). The court's message is unequivocal: if the interdistrict remedy is not set aside, Coloma's

school system will be perpetually tied to those of Benton Harbor and Eau Claire.[2]

(3) The thrust of cross-petitioners' submission is a challenge to the factual underpinnings of the district court's liability findings (Cross-Pet. 21-22). Specifically, they contend that the burden of proof was misallocated to the lower court defendants (*id.* at 26-29), and that respondents failed to prove that the transfer of the Sodus district to Eau Claire demonstrated either a discriminatory intent on the part of Eau Claire or a segregative impact on Benton Harbor (*id.* at 21-24). As relief, they seek to have the injunction against the transfer of the Sodus area to Eau Claire lifted, arguing that *no* remedy was justified in this case (*id.* at 38-39).

The issue presented by Coloma's petition is quite different. First, no factual questions must be resolved as a

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[2] To comply with the desegregation order, Coloma has had to incur the following expenses for its fiscal year ending 1983:

Consultant Fees	$22,000
Legal Fees	79,000
Liaison Officer	15,000
Desegration Director	33,000

In addition, the inclusion of 575 Benton Harbor students in the Coloma system requires Coloma to employ the following persons:

Two Administrators	57,000
Two Secretaries	20,000
Two Custodians	26,000
Two Cafeteria Employees	8,000

Further, Coloma must now maintain one obsolete school building, which, with high heat and operating costs, adds $65,000 to Coloma's bills. Thus, the approximate cost of compliance with Judge Hillman's order during fiscal 1983 will be approximately $325,000.

predicate for ruling in favor of Coloma. Coloma's petition is based solely on points of law. Second, Coloma does not seek to reverse the lower courts' order that the Eaman area be retransferred to Benton Harbor (Pet. 7-8). Coloma, in fact, has already complied with the retransfer order.

Coloma's petition is entirely forward-looking: it asks this Court only to relieve it of the unconstitutional burden of the lower courts' interdistrict remedial plan—a burden imposed upon it despite the undisputed finding that Coloma's conduct was not a substantial cause of Benton Harbor's racially segregated schools. Justice requires that the long-term implications of that unwarranted burden to be assessed by this Court, and that the plan be set aside.

CONCLUSION

Coloma's petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 28, 1983

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